

CHENG HAY GUN & ORS.

v.

PERUMAHAN FARLIM (PG.) SDN. BHD. & ANOR.

HIGH COURT MALAYA, PENANG
MUSTAPHA HUSSAIN JC
[CIVIL SUIT NO. 311 OF 1982]
16 DECEMBER 1982

LANDLORD AND TENANT: *Tenancy of vegetable land - Whether “premises” under Control of Rent Act.*

CIVIL PROCEDURE: *Injunction - Whether right recognisable by Court established - Whether damages adequate.*

The plaintiffs were tenants of portions of lands adjoining their houses on land also rented from the same landlord, though rents were paid separately. The land adjoining the houses was used to cultivate vegetable and fruit trees. The landlords decided to develop that land. The defendants were the developers. The tenants affected were to be compensated by the landlords. The plaintiffs were amongst those who rejected the scheme for compensation. The plaintiffs applied for an injunction against the defendants. The application was adjourned to open Court. Meanwhile an interim injunction was granted pending hearing and disposal of the application in open Court.

Held:

[1] The vegetable land did not come within the meaning of “premises” in s. 2, Control of Rent Act 1966. There was no unity of tenancy between the land on which the houses stood and the vegetable land. Neither was it “appurtenant” to the premises. The landlords could therefore terminate the tenancy. [*Lewis v. Purvis*, LT Vol. 177 p. 276; *Lister v. Pickford* Law Reports 24 June 1865; *Trim v. Sturmister RDC* [1938] KB 508].

[2] As the tenancy had already been determined by notice to quit at the relevant day (the date of hearing) the plaintiffs had only an equity on the vegetable land, and this could be adequately compensated. [*Application des Gaz SAV. Folks Verites Ltd.* [1974] Ch. 381; *Blackwell Ry v. Cross* [1886] 31 Ch. D. 369, *Khew Ah Bah v. Hong Ah Mye* [1971] 1 MLJ 86; *Gouriet v. Union of Post Office Workers* [1977] 3 WLR 300; *Corpn. of Birmingham v. Allen* [1877] 6 Ch. D. 284; *American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396].

[*Application dismissed.*]

Cases referred to:

Lewis v. Purvis LT Vol 177 276
Trim v. Sturmister RDC [1938] KB 508
Application des Gaz SA v. Folks Verites Ltd. [1974] Ch 381
Blackwell Ry v. Cross [1886] 31 Ch D 369
Khew Ah Bah v. Hong Ah Mye [1971] 1 MLJ 86
Gouriet v. Union of Post Office Workers [1977] 3 WLR 300
Corpn. of Birmingham v. Allen [1877] 6 Ch D 284
American Cyanamid Co. v. Ethicon Ltd. [1975] AC 396

Legislation referred to:

Control of Rent Act 1966, s. 2

Other sources referred to:

Stroud's *Judicial Dictionary*, 4th Edn., p. 2761

- a* For the plaintiffs - Eugene Khoo M/s. Eugene Khoo & Co.
For the defendants - R.J. Manecksha; M/s. Lim Kean Siew & Co.

JUDGMENT

Mustapha Hussain JC:

b **The Facts of the Case:**

It is necessary to have a brief preface with the essential facts of the case before delving deeply into the Applications.

- c* The Trustees of the Leong San Tong Khoo Kongs, Penang, are the registered owners of two big pieces of land known as part of Holding No: 2532 and adjacent Lot No: 2497 both of Mukim 13, NED, Penang (hereinafter referred to as "the lands"). The acreage is more than 400 acres and on the lands there are about five hundred houses. The owner of these houses are ground tenants of the landlords Khoo Kongs (shortened name) and were paying ground rentals for the houses at RM4 per month (as is in the instant case).

- d* Some of the 500 or so tenants (like the plaintiffs in our case here) also rented out portions of the lands adjacent to or near their houses to cultivate vegetable and fruit trees and pay separate rentals at 90¢ per month at the rate of 10¢ per 1,000 sq. ft.

[Both parties agreed that the tenancy of premises is not in issue before this Court, they being subjects before another tribunal for adjudication. The sole issue before this Court is the tenancy of the vegetable plots and tenancies other than that of the premises].

- e* The landlords, the Khoo Kongs, then decided to develop their lands into a small township, the developers being the defendants in this suit. The landlords have also agreed to a scheme of compensation for the tenants which has been accepted by some and rejected by others such as the plaintiffs in this suit.

- f* On 14 January 1982, the second defendant, Sriwata Sdn. Bhd., as plaintiffs in Civil Suit No. 22 of 1982, obtained an interim injunction *ex-parte* against (1) Teh Mah Eg, (2) P'ng Kim Cheng, (3) Lim Cheng Teik, and (4) Loo Lian Chooi (sued on their own behalf as well as on behalf of and representing all the members for the time being of the Persatuan Penduduk Penduduk Kawasan Thean Teik dan Kampong Pisang, Ayer Itam, Pulau Pinang) from trespassing and interfering with the development work being carried out by the Second defendants. The defendants/developers then proceeded to carry out development works like levelling the grounds by bulldozers etc. on these parts of the lands that were vacant. At the same time negotiations for compensation were being carried out. During the development operations the plaintiffs' vegetable plots were at some places affected and in fear of further damage the plaintiffs filed this suit on 6 June 1982 asking for an injunction to stop the defendants/developers from trespassing, encroaching, interfering with the quiet tenancy of both the premises (i.e. the houses where the plaintiffs are staying and of the vegetable plots.).

- h* The above are the prefaced facts in brief of the suit which has of late come into prominence in the press, and has become a grave social-political issue in the State.

- i* When the plaintiffs' application for injunction against the defendants came up for hearing in Chambers on 21 July 1982, it was adjourned to open Court for further arguments and in the meantime the Court gave an interim order pending hearing and disposal in open Court that the defendants do not proceed with the development works in respect of the plaintiffs' houses and vegetable plots except survey works.

The Application then came up for hearing in open Court on 27 August 1982 and was again adjourned to 29 & 30 September 1982, when it was finally disposed of. The Court ordered that the plaintiffs' application for injunction against the defendants/developers be dismissed with costs. The practical effect of this Order is that the defendants/developers can enter and develop the vegetable plots but Not to disturb or touch the houses which the plaintiffs are occupying. **a**

Coming now to the merits or otherwise of the application by the plaintiffs in this Court: In the plaintiffs' affidavit (Encl. 3) there are exhibited six receipts for the premises entitled **"Receipt For Ground Rents ON HOUSES"** and also six receipts for the vegetable plots entitled **"Receipt For Ground Rent on VEGETABLE LANDS"**. The plaintiffs also exhibited the terms and conditions that appeared at the back of the receipts of both tenancies which read as follows: **b**

For the Houses: **c**

Terms and Conditions:

1. Rent collected is for site of house.
2. No ex-gratia payment will be made when site is required by our Kongsì.
3. Notice is hereby given that all owners of house, buildings sheds etc. erected in Sin Kang Estate are not permitted to repair or make alterations, extensions, enclosures, transfer ownership, change attap roof, corrugated iron roof, asbestos roof, pigstys, poultry pens including the building of new houses etc., unless prior permission in writing has been obtained from the Trustees of the Khoo Kongsì. **d**

Should any ground tenant be found to have infringed any of the above conditions, the Kongsì shall have the right to demolish any building etc. at the expense of the owners, and no compensation or claims will be entertained by the Kongsì. **e**

For the Vegetable Lands:

Conditions of Lease of Vegetable Lands:

1. This Lease is optional to both parties, i.e. the Land-owners and Vegetable Gardeners (serving as Ground Tenant) carrying one month's Notice from either side for its termination. **f**
2. Upon termination of lease, the Vegetable Gardeners hold the privilege to extend the Lease up to the time when the last cultivated crops are harvested.
3. No party is bound to pay any claim/compensation in kind for the termination of Lease.
4. The Vegetable Gardeners will maintain the land is vacant condition at all times and will refrain making construction of any erections altogether on the land. **g**
5. If no cultivation of vegetable is made within one month's period and weeds are allowed to grow in place, the land-owners hold the right to cancel the Lease forthwith without any written warning to the Vegetable Gardeners.

Looking at these two types of receipts, it is clear beyond peradventure that there were two types of tenancies, with two separate receipts, and two separate terms and conditions of tenancy, namely, **h**

- (i) for the houses of which the plaintiffs were paying RM4 per month; and
- (ii) for the vegetable lands of which the plaintiffs were paying 90¢ per month (at the rate of 10¢ per 1,000 sq. ft. of vegetable land leased - see affidavits Encl. 15 and Encl. 17). **i**

- a* The defendants sent notices to quit in respect of the premises on 30 June 1982 and in respect of the vegetable lands on 20 July 1982 (see Encl. 11).

And Now, the Law:

- b* In this application to the Court by the plaintiffs, the question is: can the defendants be stopped by injunction from entering into the vegetable plots to begin their development works?

[As stated earlier, the Court is not concerned with the houses and the defendants' Counsel undertook not to disturb the quiet occupation of the houses by the plaintiffs.]

- c* The first question for consideration is that of law involved. Does the vegetable land come within and subject to the meaning of the definition of "premises" in the **Control of Rent Act 1966**. In s. 2 of the Control of Rent Act 1966, "premises means any dwelling house ... and any land ... occupied therewith ..." The vegetable lands in this case cannot by any stretch of the imagination be said to be the compound of the house or a garden to be enjoyed with the house. The fact that there was a separate tenancy and a separate rental clearly shows that they are not to be a unity of tenancy right from the beginning (*Lewis v. Purvis* LT. Vol 177 267 followed. See also meaning of "therewith" on p. 2761 of Stroud's *Judicial Dictionary* 4th Edn.).
- d* Neither can the vegetable lands be an "appurtenant" thereto to the plaintiffs' premises [See (1) *Lister v. Pickford* (Law Reports 24 June 1865); (2) *Trim v. Sturmister*, RDC 1938 KB 508].

This Court is of the view that the vegetable lands in this case is not within the definition of "premises" to attract the protection of the **Control of Rent Act 1966** and the landlords can terminate this tenancy.

- e* And now coming to the injunction sought by the plaintiffs:

- f* The plaintiffs filed the suit and the application for injunction on 6 June 1982. The notice to quit of the vegetable land was given on 20 July 1982. The question whether an injunction ought to be granted has to be determined by reference to the circumstances and the state of law at the date when the question falls to be determined and not at the date of the issue of the writ [See *Application des Gaz SAV Folks Verites Ltd.* [1974] Ch. 381]. The tenancy of the vegetable land at the date of hearing (30 September 1982) has already been determined by the notice to quit dated 20 July 1982. By 31 August 1982, what the plaintiffs have is only an equity on the said vegetable land and this can be adequately compensated [See *Blackwell Ry. v. Cross* [1886] 31 Ch. D. 369; *Khew Ah Bah v. Hong Ah Mye* [1971] 1 MLJ 86]. This Court after perusing the affidavits filed and after hearing arguments, is of the view that the plaintiffs have not succeeded in establishing claims (for an injunction on the vegetable lands) such as to succeed for a permanent injunction at the trial. Nor have the plaintiffs established a legal right to their claims recognizable by the Court to enable the Court to grant an injunction [See *Gouriet v. Union of Post Office Workers* [1977] 3 WLR 300; *Corpn. of Birmingham v. Allen* [1877] 6 Ch. D. 284].
- g* This Court is also of the view that damages would be an adequate remedy [*American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396], and hence the plaintiffs' application for injunction is dismissed with costs.
- h*

Also found at [1983] 2 CLJ 84